# How to get ahead during 401(k) Crazy Season

**Suggestive hints on how you can increase your 401(k) business with potential clients.**

**By Ary Rosenbaum, Esq.**

With the last few months of 2010 upon us, I always call this time 401(k) Crazy Season because this is the time that many plan sponsors decide to make a change of 401(k) administrators (TPAs) and advisors, in order to make a December 31st transition, so they can start the new Plan Year on January 1 with the new TPA and/or advisor in place.

While plan sponsors are kicking the tires of potential, new TPAs and advisors, an advisor who thinks outside the box to cover all the bases may get a leg up on the competition in landing the new client. To that end, I have a number of suggestions that you may use to show the potential client why your are the right advisor for them.

1. Check the 5550. We all know that the information on the 5500s are stale (remember what the world was like in 2008), but it still may give a good estimate of plan participants and plan assets, as well as some information that the current TPA and/or Plan advisor may not want you to see. High fees, lack of a required ERISA bond are some of the glaring errors that pop up on a 5500.

2. Always ask the potential client, a copy of their investment policy statement (IPS) and an asset statement from the plan's custodian. So many plans don't have an IPS, which is a red flag for potential fiduciary liability in participant directed 401(k) plans. Asset statements are important because the Plan may have too many investment options (is 28 funds more than enough?) or have funds with share classes that are inappropriate for the Plan's size.

3. Ask for a copy of the service agreement with the TPA and/or custodian. If the Plan is using a bundled product or using an insurance company custodian, check if there are any surrender charges or when the contract expires. In 2008, I reviewed a plan with a Nationwide contract that expired in 2001. They were only paying 267 basis points in fees! Are there are any deconversion costs, what is the notice requirement a plan sponsor has to make, to make a change.

4. Check the stable value contract if the Plan offers a stable value investment. I have come across so many 401(k) plans that suffered a market value adjustment (mva) because the stable value fund's CUSIP is attached to the TPA. Of course, what these plans didn't know was that this TPA/RIA was making an extra 25 bps by pushing a fund with an mva.

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5. Check the plan design. Too many advisors think within the box and don't question whether plan design is still applicable. Partner up with a 401(k) expert or ERISA attorney (cough, cough) who can help you out. Does a safe harbor plan make sense? What about new comparability? Automatic enrollment? Roth 401(k)? An in-service distribution if the plan doesn't offer one? One loan limit if the Plan offers multiple loans? The more questions you ask about their plan design, the smarter you look.

6. Review plan administration. So many times, the TPA does mess up. Employees can easily be misidentified as non-highly compensated employees or non-key employees, when they really are. Again, partner up with the experts to determine if the testing for ADP, ACP, and Top Heavy make sense.

7. Check the plan document. Has it been properly updated? Are they using a prototype that may require a restatement if they change providers? Again, check with the experts for a quick document review.

8. Check the materials given to plan participants. Are plan participants given investment education or is the potential client just giving the participants, a copy of a Summary Plan Description and Morningstar profiles? Lack of education on directed investment options won't protect the plan sponsor under ERISA §404(c).

9. Check the TPA fee statements. As discussed in an article below, a Retirement Plan Tune-Up discovered a 19 basis point charge for a fictitious fee. Are all fees being disclosed? Are the funds in the Plan, revenue sharing producing?

As always, consider a Retirement Plan Tune-Up during any stage of the client recruitment process, especially during the conversion process to a new TPA.

Ary Rosenbaum is the Managing Partner of The Rosenbaum Law Firm P.C. where he works across the United States, helping plan sponsors and their financial advisors to minimze plan administration cost and potential liability on a flat fee basis.


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